

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

KAREN SERCU, individually, and  
DANA SERCU, individually, and as  
Husband and Wife,

Plaintiffs,

v.

LABORATORY CORPORATION OF  
AMERICA, dba LabCorp,

Defendant.

3:09-cv-0619-LRH-RAM

ORDER

Before the court is plaintiffs Karen and Dana Sercu's ("the Sercus") motion in limine #1-4 filed in state court on October 13, 2009. Doc. #1, Exhibit 9, p.43-47.<sup>1</sup> Defendant Laboratory Corporation of America ("LabCorp") filed an opposition on November 2, 2009. Doc. #17.

Also before the court is the Sercus' motion in limine #5-8 filed on April 5, 2010. Doc. #28. LabCorp filed an opposition on April 22, 2010. Doc. #29.

**I. Facts and Procedural History**

Plaintiff Karen Sercu allegedly suffered a permanent gastrointestinal injury as a result of LabCorp's negligent handling of her plasma specimens. Karen and her husband, Dana Sercu, filed a complaint against LabCorp in state court alleging two causes of action: (1) negligence per se; and

<sup>1</sup> Refers to the court's docket entry number.

1 (2) gross negligence. Doc. #1, Exhibit A.

2 LabCorp removed the action to federal court alleging diversity jurisdiction. Doc. #1. Prior  
3 to removal, the Sercus filed the present motion in limine #1-4 in state court. Doc. #1, Exhibit 9,  
4 p.43-47. The Sercus seek an order precluding LabCorp from proffering evidence relating to:  
5 (1) Karen's prior marijuana use; (2) Dr. Hinojosa's, Karen's treating physician, prior relationship  
6 with the Sercus' counsel; (3) an interim automobile accident in which Karen suffered injuries; and  
7 (4) the opinion of Danielle Schultz ("Schultz"), a phlebotomist, that Karen was under the influence  
8 when her blood was drawn on October 1, 2009. *Id.*

9 After removal, the Sercus filed the present motion in limine #5-8. Doc. #28. The Sercus  
10 seek a further order precluding LabCorp from proffering evidence relating to: (5) testimony that  
11 Karen's blood samples were frozen within fifteen (15) minutes of being taken; (6) Dana's other  
12 than honorable discharge from the military; (7) the Sercus' previous bankruptcy filing; and (8) the  
13 Sercus' participation in other litigation. *Id.*

## 14 **II. Discussion**

15 The Sercus argue that all of the above reference evidence is not relevant to the underlying  
16 litigation and, therefore, LabCorp should be precluded from proffering such evidence at trial.  
17 Generally, evidence is relevant if it has "any tendency to make the existence of any fact that is of  
18 consequence to the determination of the action more probable or less probable than it would be  
19 without the evidence." FED. R. EVID. 401.

20 Here, the court finds that the present motions in limine are premature. The court cannot,  
21 based solely on the limited record provided in the motions in limine, determine the relevancy of  
22 this evidence. Discovery has not yet been completed and dispositive motions and the pretrial order  
23 are not due for some time. Thus, it is not clear on the record before the court whether or not the  
24 aforementioned evidence would be relevant to the underlying litigation.

25 Additionally, the court finds it unnecessary at this time to provide a general court order  
26

1 excluding evidence the Sercus believe to be irrelevant when there has been no indication that  
2 LabCorp intends to admit such evidence or testimony. The court finds that the Sercus' motions are  
3 more appropriately dealt with after the action has progressed and the record has been more fully  
4 developed. Accordingly, the Sercus' motions in limine shall be denied without prejudice.

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6 IT IS THEREFORE ORDERED the clerk of court shall file, as a separate motion, plaintiffs'  
7 motion in limine #1-4, filed in state court and attached as Exhibit 9, p.43-47, to defendant's petition  
8 for removal (Doc. #1).

9 IT IS FURTHER ORDERED that plaintiffs' motion in limine #1-4 is DENIED without  
10 prejudice.

11 IT IS FURTHER ORDERED that plaintiffs' motion in limine #5-8 (Doc. #28) is DENIED  
12 without prejudice.

13 DATED this 20th day of July, 2010.



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16 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE